IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14859 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.H.WAGHELA Sd/-
and
HON'BLE MR.JUSTICE K.A.PUJ Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 to 5 No

SANJARI TWISTERS

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 14859 of 2003

ME MIHIR JOSHI for MR NITIN K MEHTA for Petitioner No. 1-2

MR DN PATEL for Respondent No. 1

..... for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE D.H.WAGHELA
and
HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 03/11/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.H.WAGHELA)

1. RULE. Learned senior standing counsel Mr.D.N.Patel waived service for the respondents.

2. By this petition under Article 226 of the Constitution, the petitioner has called into question two orders of the Customs, Excise and Gold (Control) Appellate Tribunal [CEGAT], West Zone Bench, Mumbai, whereby the petitioner was directed to deposit Rs.3 lakhs out of the total duty within a month and, by the subsequent order, the application for modification of the conditional stay order was rejected.

3. It was submitted by learned counsel Mr.Joshi that the petitioner has a very good prima facie case considering which the deposit of the balance duty and penalty as also their recovery were stayed. He submitted that in view of the extremely difficult financial condition of the petitioner and closure of their undertaking, the petitioner were not in a position to make the necessary deposit within the stipulated time and had to apply for modification, which application was also rejected resulting into a situation where the petitioner would lose its appeal only on that ground despite having a good prima facie and arguable case in its favour. In view of the strong objection raised on behalf of the respondent, it was stated at the Bar by Mr.Joshi that the petitioner would still make the deposit of Rs.3 lakhs if the facility of installments and extension of time were granted so as to, at least belatedly, comply with the aforesaid orders and he also made a statement that the petitioner being a partnership firm, each of its partners shall file before the Tribunal an undertaking to pay the full amounts payable after the decision of the CEGAT subject to their right of appeal.

4. Thus, the petitioner has expressed its readiness to comply with the first order under challenge and offered to make the deposit in six equal monthly installments of Rs.50,000/- as also file the undertakings to make full payment of duty and penalty as may be finally determined by the CEGAT subject to its right of appeal. In these facts and circumstances, it appears to be in the interest of justice that the appeal of the petitioner should be heard and decided on merits after the full payment of the required deposit is made according to the statement made before us. The respondent having no serious objection to the matter being finally decided on these lines, the petition is partly allowed with the direction that each of the partners of the petitioner firm shall file an undertaking in the Tribunal stating that they shall personally pay

the amount of duty and penalty as may be determined by the CEGAT after hearing the appeal subject to their right of appeal and comply with the statement that the amount of Rs.3 lakhs shall be deposited in accordance with the impugned order in six equal monthly installments of Rs.50,000/-, the first instalment being payable in the first fortnight of each month starting from this month. Upon such payments being made and the undertakings being filed, the appeal of the petitioner shall be heard and disposed in accordance with law by the CEGAT. The petitioner shall abide by the undertakings proposed to be filed. Accordingly, Rule is made absolute with no order as to costs.

Sd/-

(D.H.Waghela,J.)

Sd/-

(K.A. Puj, J.)

(KMG Thilake)